IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 4TH JANUARY 2007 / 14TH POUSHA 1928

Crl.MC.No. 509 of 2006()

ST.976/2005 of CHIEF JUDICIAL MAGISTRATE COURT, TRIVANDRUM

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PETITIONER/ACCUSED NOS.1 AND 2:

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1. AIR LINK INDIA LTD., 7 KYD STREET,
   CALCUTTA, PIN-700 016, REPRESENTED BY ITS
   DIRECTOR SRI. SUNDHAN ROY, REP. BY VINOD NAIR
   DY.REGIONAL MANAGER, AIR LINK INDIA LTD, HARBOUR VIEW
   MILNA ROAD, WILLINGDON ISLAND, COCHIN-3.

2. VINOD NAIR, DEPUTY REGIONAL MANAGER
   AIR LINK INDIA LTD., HARBOUR VIEW,
   MILNA ROAD, WILLINGDON ISLAND, COCHIN-3.

BY ADV. SRI.SUNIL JACOB JOSE

RESPONDENTS/COMPLAINANT/3RD ACCUSED:

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1. STATE OF KERALA, REPRESENTED BY
   THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

2. MR. JAMES FERNANDEZ, T.C.34/824,
   NEAR AIR CARGO COMPLEX, VALIATHOPE,
   VALLAKKADAVU P.O., THIRUVANANTHAPURAM-8.

3. MR. SURESH KUMAR, RESIDING AT
   `SOWPARNIKA' TRA-41, THAMALAM,
   POOJAPURA P.O., TRIVANDRUM.

BY PUBLIC PROSECUTOR SRI.K.A.AKBAR
SRI.THOMAS ABRAHAM FOR R2
SRI.K.B.ARUNKUMAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 04/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.509 of 2006

Dated this the 4th day of January 2007

O R D E R

The petitioners are accused 1 and 2 in a prosecution under Section 138 of the Negotiable Instruments Act. The first accused is a company and the second accused, its Deputy Regional Manager, is the person who has allegedly signed in the cheque on behalf of the first accused. Cognizance has been taken by the learned Magistrate against the petitioners herein as also the third accused, the Manager of the Thiruvananthapuram unit of the first accused company.

2. The petitioners have come to this court with a prayer that the proceedings against them may be quashed invoking the powers under Section 482 Cr.P.C.

3. What is the reason? The learned counsel for the petitioners submits that blank signed cheques were misutilised by the third accused and were handed over to different persons including the complainant. In these circumstances, petitioners 1 and 2 cannot be saddled with any liability on those cheques.

4. This essentially is a contention which the petitioners will have to raise before the learned Magistrate in the course of the trial. At the stage of Section 482 Cr.P.C invoking the inherent jurisdiction, such disputed questions of fact cannot obviously be resolved. The petitioners will, of course, be entitled to contend that the blank signed cheques in the account, for which the first accused is the drawer/account holder and the second accused is the signatory, have been misutilised by the third respondent. The learned Magistrate will certainly have to consider such contention on merits.

5. The learned counsel for the petitioners further submits that the petitioners have now come to realise that the cheque in question is not signed by the second accused also. That again is a contention which the petitioners have the liberty to raise before the learned Magistrate at the appropriate stage. On the basis of that contention, proceedings cannot obviously be quashed.

6. In the result, this Criminal Miscellaneous Case is dismissed with the above observation.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006